IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4539 OF 2003

Madan Marutirao Pawar .. Petitioner
Vs.
Maruti Kisan Shivarkar & Ors. .. Respondents.

Mr.P.B.Shah for the petitioner.
Mr.Anil Subramaniam for respondent nos.1 to 8.

CORAM : D.B.BHOSALE, J.

DATED : 17TH FEBRUARY, 2005

P.C.:

. Heard Mr.Shah, learned counsel for the petitioner and Mr.Subramaniam, learned counsel for respondent nos.1 to 8.

2. This petition is directed only against the part of the order dated 28.2.2003 passed by the executing court in Special Darkhast No.144/2000 by which the Court directed to pay an interest accumulated on the principal amount of Rs.146,750/- to the respondent - judgment-debtor. It appears that in a suit filed by the petitioner - decree-holder the parties had arrived at compromise and the suit was decreed in terms of the compromise. The suit was filed for specific performance of an agreement dated 22.1.1992. As per clause 2 of the

consent terms the petitioner had agreed to deposit the entire amount of consideration, which he, in fact, deposited by cheque dated 17.4.2000. The total amount that was deposited by the plaintiff was Rs.1,46,750/-. By clause 3 of the consent terms, the petitioner was given liberty to get an appropriate document executed through a Court Commissioner. The consent decree was passed on 13.4.2000 whereas the document was executed through the Court Commissioner on 28.11.2001. During that period since the amount that was deposited by the petitioner was lying in the Court, it had directed to invest that amount in fixed deposit and that is how some interest on that amount was accrued which is in dispute in the present writ petition. Mr.Shah, learned counsel for the petitioner, at the outset submitted that in the absence of express provision in the compromise regarding payment of interest, the executing court was wrong in directing payment of interest to the defendant which had effect of modifying the consent decree. In support of his contentions he placed reliance on the judgment of this court in **State of Goa, through the Executive Engineer Vs. Placido Braganza & Ors. 2002 (1) Mah.L.J. 378**. In my opinion, that judgment would not help the petitioner for simple

reason that the issue of interest in that petition was arising in the proceeding under Land Acquisition Act. In the present case as per the consent decree the petitioner was liable to deposit Rs.1,46,750/- as an amount of consideration for execution of an appropriate document. The Court by its order had directed to keep that amount in fixed deposit. It is clear that under the terms of consent decree the petitioner was liable to pay aforementioned amount as consideration for getting appropriate document executed through the Court Commissioner. That was done on 28.11.2001. In any case under the terms of compromise the respondent was entitled for the consideration before execution of the agreement and therefore, whatever interest is accrued on that amount, in my opinion, it should go to the respondent. In view thereof the Executing Court, has rightly held that the petitioner is not entitled for interest accrued on Rs.1,46,750/-. I find no infirmity in the order passed by the executing Court. The judgment relied upon by the petitioner is of no avail to the petitioner in the facts and circumstances of the case. The petition is dismissed. Looking to the quantum of the accrued interest the prayer of Mr.Shah for extending the ad-interim relief for further period of two weeks

only is rejected.

(D.B.Bhosale, J.)